Insurance Industry Bad Faith

by Attorney Jes Beard

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I am not one to encourage government regulation, and in fact very strongly oppose it, and I'm not advocating it here, but it is important to be aware of the fact that despite the denials of its defenders, the insurance industry has been demonstrably acting in bad faith in dealing with legitimate claims company representatives clearly knew were valid, and which the insurance company admitted it was responsible for covering by virtue of the insurance policy. (I am not faulting aggressive defense of insurance claims, or insistence that a claim be properly proven, but I am nonetheless offended by insurance industry low-ball tactics, efforts to starve out injured plaintiffs with no income as a result of their injury, taking advantage of injured parties to get settlements before they even get out of the hospital to talk with an attorney, lying during litigation, or refusing to reasonably respond to injured parties not represented by attorneys.)

What follows below is but one example: an actual affidavit of a former State Farm employee addressing her own personal observations of a number of specific acts of bad faith in the company's efforts to avoid paying valid claims made between 1994 and 1996.

ABSTRACT:

DECLARATION OF AMY GIROD ZUNIGA

I, Amy Girod Zuniga, declare as follows.

1. I am an adult over the age of 18 and am not a party to this action. I have personal knowledge of all of the following, and if called as a witness I could and would testify competently to the truth thereof.

2. I am a former employee of State Farm Fire and Casualty Co. and State Farm Mutual Automobile Insurance Co. (collectively, "State Farm" or "the Company"). I was employed there from 1988 through mid-1996, and in fact separated during the pendency of the Taylor litigation. Since August of 1994, I worked first in the Automobile Company's so-called "SAC" unit ("Suits Against the Company" unit) and then in the Fire Company's SAC unit. Later these units were renamed, "Litigation Units." My most recent job title before separation from the Company was Claims Specialist. My responsibilities included evaluating bad faith suits brought against the Company by insureds, responding to discovery and monitoring litigation. I did so in connection with the Taylor litigation.

3. In this capacity, I am aware that there were many other State Farm claims arising out of the Northridge earthquake like the Taylors' involving unauthorized signatures by State Farm agents or agency employees on applications omitting earthquake coverage. At the time of the Taylor claim, the Company was well aware that this was a problem. As a matter of practice, the Company would pay these claims, if it believed that the forgery issue would be brought to light and proven by the insured. Because of the forgery issue in the Taylor case, if the case was not dismissed on summary judgement, it was my impression that the claim was

going to be reconsidered. However, we were waiting to see if we could save money on the Taylor claim by having summary judgement granted, and as part of that plan I was instructed not to provide certain relevant information at my depositions.

4. Specifically, my supervisor in the SAC unit, Vanessa Gudelj, and her supervisor, John Poptanich, put pressure on me to withhold the existence of documents memorializing certain State Farm claims handling guidelines from plaintiffs' counsel Bernie Bernheim at my deposition, which they believed, if revealed, would defeat summary judgement and ultimately lead to payment of the Taylors' claim. They pressured me into not revealing the existence of claims handling documents which established guidelines under which claims like the Taylors were to be handled. These included a three ring binder called "CATHR Management Information and Memos Manual" used and maintained by Claim Superintendent Tinga Nicholson who was the Claim Superintendent that denied the Taylors' claim. It was responsive to the Taylors' discovery request and we simply chose not to produce it. Similarly, Ms. Nicholson had prepared a breakdown of earthquake claims in her unit (the SHU unit - see below) by category of claim, and one of the categories was "unauthorized signatures." This document showed the percentage of total earthquake claims which involved unauthorized signatures. This document, too, was never produced.

5. The Taylors' claim was denied by personnel working in the so-called "Special Handling Unit." In addition to the claims handling documents mentioned above, we never produced to Mr. Bernheim a document memorializing a SHU meeting at which the subject of unauthorized signatures on applications omitting earthquake insurance was discussed. This document has a heading as follows:

"Problem areas
- Telephone apps [applications] - EQ [earthquake] has to be in person.
Und. [Underwriting] was supposed to catch 'not signed'
- in some cases the agent or staff signed it."

6. In the SAC unit, we knew that Rod Taylor's signature on the application was clearly not his signature.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 19th day of September, 1996 at Ojai, California.

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

RODERICK TAYLOR, an individual; and KRISTA TAYLOR, an individual Plaintiffs, vs. STATE FARM FIRE AND CASUALTY COMPANY, et al., Defendants. AND RELATED CROSS-ACTIONS	CASE NO.:BC 119992 (Case assigned to the Honorable Charles McCoy for all purposes) DECLARATION OF AMY GIROD ZUNIGA IN SUPPORT OF PLAINTIFFS' MOTIONS FOR RECONSIDERATION AND MOTION FOR NEW TRIAL DATE: November 5, 1996 TIME: 8:30 AM DEPT.: 24 DISCOVER CUTOFF: Vacated MOTION CUTOFF: Nov.24,1996 TRIAL DATE: Dec. 9, 1996

DECLARATION OF AMY GIROD ZUNIGA

L Amy Girod Zuniga, declare as follows:

1. I am an adult over the age of 18 and am not a party to this action. I have personal knowledge of all of the following, and if called as a witness I could and would testify competently to the truth thereof.

2. I am a former employee of State Farm Fire and Casualty Co. and State Farm Mutual Automobile Insurance Co. (collectively, "State Farm" or the "Company"). I was employed there from 1988 through mid-1996, and in fact separated during the pendency of the Taylor litigation. Since August of 1994, I worked first in the Automobile Company's so-called "SAC" unit ("Suits Against the Company" unit) and then in the Fire Company's SAC unit. Later these units were renamed, "Litigation Units." My most recent job title before separation from the Company was Claims Specialist. My responsibilities included evaluating bad faith suits brought against the Company by insureds, responding to discovery and monitoring litigation. I did so in connection with the Taylor litigation.

3. Mr. John Poptanich, Divisional Claim Superintendent, was head of my Litigation Unit in part of 1995 and 1996. Michael Coy Kendall, Divisional Claim Superintendent, was his predecessor. There was also a Costa Mesa Litigation Unit. Its personnel included Ralph Carlino, Dana Dillabough, Diane Andrikos, Dave Capirillo. There was also a General Claim Litigation Unit headed by Jim Stark. Its members included Mary Ann Ridgeway, who observed me in the first session of my deposition and Mary

Bowman.

4. I have reviewed many of the papers and declarations which State Farm submitted in support of its summary judgement motion and opposition to plaintiffs' motion for leave to amend.

5. While I was working on the Taylor case at the State Farm SAC unit, Mr. Richard Churik, the operator of the Automatic Insertion Machine ("AIM") and others at State Farm made statements to me which are inconsistent with much of what is contained in State Farm's papers and declarations.

6. I made a number of inspections of the AIM system with its operator Richard Churik, with underwriting superintendent Charles G. "Glenn" Hook, with attorney G. Arthur Meneses of the law firm of Berger, Kahn, et al, and with a consultant named Don Winslow. Mr. Winslow was making a film about the AIM for use in the Taylor case, and was advising us in how we could present the AIM to a jury in such a way as to maximize its strengths and gloss over or hide its weaknesses.

7. Mr. Churik verbally explained the workings of the automatic insertion machine to Mr. Meneses, Mr. Winslow and me. Mr. Churik explained that after the machine has stopped due to a failure to pick up a stuffer, the operator can override and restart even if the operator has not manually corrected the problem. Mr. Winslow and I discussed the fact that if an operator became frustrated with the repeated failure of one of the bins to function correctly, he could simply ignore the problem and allow incorrectly stuffed envelopes to be mailed out. Mr. Winslow and I agreed that in reality the machine was only as good as the operators working it, and that this was a problem we would have to address in making the film. I worked on "cleaning up" the mail room crew for the film.

8. Mr. Winslow and I observed the machine for an extended period of time on several occasions. We observed the machine stopping numerous times due to some malfunction. In fact, I would go so far as to say that I observed this occurring regularly.

9. Near the machine, Mr. Winslow and I observed a square receptacle resembling a square bucket in which were a bunch of crumpled up mailer-type documents. They were covered in splotches of red ink, for some reason. I asked Mr. Winslow if this bucket of crumpled up insurance documents concerned him at al, and he replied, in substance, "We won't take a picture of that."

10. Posted on one of the walls is a large sign, stating in substance: "DO NOT LEAVE PREMIUM NOTICES ON THE FLOOR." I

understood this to be evidence that someone had been leaving important insurance documents lying around on the floor of the room housing the AIM system. I discussed this matter with Mr. Winslow because it concerned me. He responded that we take only close-up shots of the machine operating so that the sign would not appear in the film.

11. I am myself a State Farm homeowners policyholder. I told Mr. Meneses that I, personally, had received not once, but on two separate occasions, renewal certificates belonging to another policyholder which had somehow been inadvertently stuffed into envelopes with my own renewal certificates. This caused me concern. Mr. Meneses did not respond.

12. A State Farm unit called "Administrative Services" has a manual for operation of the AIM called a "service text, ." which contains a section or sections pertaining to the AIM system, dated July 1993. It was responsive to the Taylors' request for production. Mr. Meneses and I discussed whether to produce it to plaintiffs' counsel Bernie Bernheim. We decided not to identify it or produce it. Mr. Churik had informed us that he had not been in compliance with procedures in the "service text" pertaining to maintenance of the "control sheets." The "control sheets" were daily documentation pertaining to the particular runs made by the AIM system. If there was more than one control sheet for a particular day, that would show that a "re-run" had to be performed, indicating that there was a mistake in the original run. Mr. Churik told me that the failure to maintain the control sheets as set forth in the service text was a mistake. I was concerned that if this mistake got out, it would undermine the credibility of the AIM system. Mr. Meneses voiced the same concern to me. We decided not to identify or produce the service text, and instead to keep its existence from plaintiffs' counsel.

13. I noted that in his declaration, State Farm underwriting superintendent Charles "Glenn" Hook relied on State Farm PDQ computer screen printouts for his testimony that offers and notifications were mailed to the mailing address on the policy. These PDQ screens require special training to read and interpret. Based on my training in interpreting these PDQ screens, and on my review of the exhibits filed in support and opposition the motion for summary judgement, it is clear to me that the PDQ screen printouts for the early 1990s on which Mr. Hook relied were materially inaccurate.

14. In my review of the exhibits, I saw that none of the declarations pages for the Stoneridge policy contained a warning that there was no earthquake coverage, other than one created during litigation by Mr. Hook for the 1993-1994 policy period.

This is contradictory to statements Mr. Hook made to me prior to my separation from the Company. Mr. Hook told me that a homeowners declaration page for a policy where there is no earthquake coverage is supposed to have a warning under the Company's business practices.

15. I was repeatedly told by my supervisor Claim Superintendent Vanessa Gudelj never to use the word "forgery" in connection with the forgeries of the signatures of State Farm insureds by State Farm agents and agency employees. She told me to always use the term "unauthorized signature" instead, whenever discussing this subject. I and some of the other SAC unit personnel referred to the word "forgery" as the "F-word."

16. John Bishop is one of the Company's senior executives at the corporate headquarters in Bloomington, Illinois. His title is Senior Claim Consultant. During 1996, he regularly participated in telephone conference calls pertaining to the Taylors. Sandra Hobbs is a long-time employee of State Farm agent Harry Gelpar. During Ms. Hobbs' deposition, I had a very lengthy cellular phone conference call with Mr. Bishop. Also participating in the call was my supervisor Vanessa Gudelj, and her supervisor John Poptanich. No outside attorneys participated in this call, and in fact Mr. Meneses later expressed to me the sentiment that he was concerned that he had not been invited.

17. During this call, Mr. Bishop stated that State Farm witnesses should not admit that forgeries happen, unless and until they are compelled to do so by Court order. Mr. Bishop asked us whether we think that the Company will ultimately have to admit that this happens. Mr. Bishop went on to state that we have to decide how to tell our story should the Company be compelled to admit that it has knowledge of the "unauthorized signatures." He said we should try to make this practice look like a "service."

18. There is an insurance company called American Home which provides errors and omissions coverage for State Farm's agents. There are certain circumstances in which a law suit naming a State Farm agent is tendered to American Home for a defense and indemnification. At one point, I questioned whether the Taylors' suit naming Mr. Gelpar should be tendered to American Home. I was told that there was no point to doing so, because American Home would not accept the tender in State Farm agent forgery cases. I was told that the reason for this was that American Home took the position that State Farm had ample notice of conduct of this type by its agents, and that State Farm had taken no meaningful steps to correct the problem. Therefore, American Home's position was that State Farm had ratified and authorized the agents' conduct, so that State Farm was responsible for

claims arising out of this type of conduct. American Home took the position that State Farm, not American Home, should therefore be responsible for paying these kinds of claims.

19. I was aware of the existence of a number of documents pertaining to the Company's practices and procedures regarding signatures and the taking of applications by agents which were never produced to plaintiffs in the Taylor case. There is a series of documents called "communiques" which are sent by the Company to agents. These are produced by the Education and Training Department. There was an entire "communique binder" which was maintained by Ms. Marci Chairenza of the Education and Training Department. Before Ms. Chairenza, it was maintained by Ms. Lenore Hatzenbiler, who now works in public affairs. This binder contains an index. Among the communiques which may be relevant to the Taylor case but which have never been produced are "Signatures on New Applications - Personal & Commercial," 92-45-F, d. August 25, 1992; "Earthquake Offer Update," 91-14-F, d. March 19, 1991; and "Earthquake Offer," 92-60-F, d. December 17, 1992. I have heard that there are other policy and procedure documents sent to agents by the Company called "green sheets."

20. In discovery, the Taylors requested that the Company produce its claims manuals. The Company calls its claims manuals, "Operations Guides." The Operations Guides produced to the Taylors were not a complete set of the Operations Guides, nor even a complete set of the Operations Guides pertaining to the handling of earthquake claims. Rather, plaintiffs were given a carefully created packet from which material had been removed. The material removed included the index. The tactic behind producing this "created packet" of Operations Guides was to give plaintiffs something containing no damaging information, but which was voluminous enough to distract their attorneys.

21. David Tannenbaum is a Company employee who works in a unit formerly called "the Discovery Unit," whose task is to locate and produce documents and other information in response to discovery requests. This unit is located in Bloomington and is headed by Ms. Chris Lynch.

22. I was informed by David Tannenbaum that identical, screened packets of Operations Guides were to be produced in all earthquake cases in response to discovery requests which asked in substance for "all policies and procedures regarding earthquake claims handling," regardless of the specifics of the particular facts of the case, and that is what I did. In fact, I do not recall any earthquake case in which I produced anything in the way of policies and procedures other than the created packet described above. Not producing the index, for example, would greatly limit the ability of plaintiffs to request other relevant

operations guides.

23. Prior to my deposition, I was specifically instructed by my supervisor, Vanessa Gudelj, not under any circumstances to "give up" the name of David Tannenbaum to plaintiffs' counsel Bernie Bernheim, nor to reveal Mr. Tannenbaum's role. I received the same instructions with regard to Mr. Tannenbaum's colleague, Mr. Tim Crouthamel, who also worked at the corporate headquarters in Bloomington, Illinois.

24. I produced lengthy memoranda analyzing the discovery requests made by the Taylors through their counsel, Bernie Bernheim. I forwarded these memoranda to the Discovery Unit.

25. In discovery responses, the Taylors asked State Farm to identify the dates on which AIM system runs had to be repeated due to errors. State Farm informed the Taylors that there is no such documentation kept. This is not entirely accurate, in that there are records kept of the postage which is placed on the envelopes. An unusually high amount of postage for a particular date would indicate that an AIM run had to be repeated. I discussed this with Mr. G. Arthur Meneses of Berger, Kahn, et al, and he dismissed it.

26. The Taylors brought a Colonial Life discovery motion, which was never heard due to the granting of State Farm's summary judgement motion and the denial of plaintiffs' motion for leave to file a third amended complaint. This motion sought among other documents, all Special Handling Unit claims files arising out of the Northridge earthquake, and all claims files handled by Tinga Nicholson, Dale Henderson, and Toni Hotzel arising out of the Northridge earthquake.

27. There were about 2000 SHU files. They were inventoried on a PC by claims superintendent Tinga Nicholson. My understanding is that these were primarily kept at the Lindero office. Some may have been sent to "the pit," which is a claims file storage facility in Newbury Park. In Shekhter v. State Farm, a Los Angeles superior court case, I participated in a team which had to review hundreds of claims files for production pursuant to a Colonial Life motion and court order.

28. The Company has a computer program on its system called "Search Express" for locating documents. Search terms can be inputted to generate lists of responsive documents, in a fashion similar to the Internet.

29. At the second session of my deposition, the subject of my separation from State Farm came up. I took a break with G. Arthur Meneses of Berger, Kahn, et al., whom the Company had appointed to represent me in the second session of my deposition.

During the break, I told Mr. Meneses that I felt he had a conflict of interest in representing both me personally and my former employer at this deposition. I told him that I intended to fire him as a result. He called my former supervisor, Vanessa Gudelj, and had a lengthy telephone conversation with her. After his conversation, he returned with a written script which Ms. Gudelj had prepared for me to use in answering deposition questions. Mr. Meneses was apologetic in communicating this to me. I did not feel it was appropriate for me to respond to deposition questions with "answers" memorized from a written script. Moreover, what was in the script was not the truth. We returned to the deposition room, and I had resolved to testify to the truth. When the deposition resumed, Mr. Bernheim asked if I felt uncomfortable discussing the subject of my separation from State Farm. I said that I did, and he moved to another topic.

30. Giving me this written script to follow at my deposition was typical of the practices and procedures I observed at the Company in connection with the preparation of Company witnesses for deposition. As part of my duties at the SAC unit, I participated in the preparation of many witnesses for deposition.

31. The Company routinely retained professional witness consultants to prepare State Farm employees for giving testimony at deposition and at trial. Over the years, these consultants have Mr. Steve Herzberg and Mr. Don Winslow. Typically, such consultants would spend many hours training witnesses on how to give up as little information as possible at deposition. Witnesses were trained to answer questions as literally as possible. An example that was commonly used in training witnesses was the question, "Where is your car parked right now?" During preparation, the witness would initially offer an answer like, "In the parking lot downstairs." The witness would then be told, in substance, that this was an incorrect answer because the witness was assuming that the car had not been stolen, or towed away, or otherwise moved since the time the witness had last seen his or her car. The witness would be told that the only correct answer to this question was, therefore, "I do not know." Other tactics that were provided to the witness for use in deposition included not looking directly at the examiner, since eye contact would tend to facilitate meaningful communication and the giving of information. Witnesses were taught not to answer a question with a "yes" or "no," to minimize the likelihood of giving a truly responsive answer. A yes or no does not give "wiggle room" to change the answer at a later time. Witnesses were taught to pretend not to understand the initial deposition admonition, to throw off the insureds' attorney. The entire point of this training was to make it as difficult as possible for the insureds' attorney to learn any meaningful information about the Company, its practices or the insureds' claim.

32. At trial, the Company's witness tactics are different. Consultants like Mr. Herzberg and Mr. Winslow trained the Company's witnesses to act completely differently for the jury trial than at deposition. Witnesses were trained to appear helpful and polite, and to drop the evasive tactics used to keep information from being disclosed at deposition.

33. Don Winslow prepared underwriting superintendent Charles G. "Glenn" Hook for his deposition taken by plaintiffs' counsel Bernie Bernheim in the Taylor case. I referred to Mr. Winslow as a "spin doctor," because he was talented at helping us mold a witness' story on a particular topic so that it would become the story we wanted to tell. In Mr. Hooks' case, the story we wanted to tell was about the supposed infallibility of the Company's system for complying with statutory earthquake offers and notifications. As was sometimes the case in the Company's witness preparation sessions which I participated in, many people attended the Hook session and added their input into how the witness was going to tell the story. The Hook deposition prep was attended at various times by, among others: Costa Mesa SAC unit claims superintendent Diane Andrikos, Melody Caplan, AIM operator Richard Churik, John Poptanich, myself, and spin doctor Don Winslow.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 25th day of September, 1996 at Ojai, California.

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Lawyers for Plaintiffs
Roderick Taylor and Krista Taylor

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

RODERICK TAYLOR, an individual; and KRISTA TAYLOR, an individual Plaintiffs,	)	CASE NO.:BC 119992 (Case assigned to the Honorable Charles McCoy for all purposes)
vs.	)	DECLARATION OF AMY GIROD

)	ZUNIGA IN SUPPORT OF
)	PLAINTIFFS' MOTIONS FOR
)	RECONSIDERATION AND
STATE FARM FIRE AND CASUALTY)	MOTION FOR NEW TRIAL
COMPANY, et al.,)	
Defendants.)	DATE: November 9, 1996
)	TIME: 8:30 AM
_____)	DEPT.: 24
)	DISCOVER CUTOFF: Vacated
AND RELATED CROSS-ACTIONS)	MOTION CUTOFF: Nov.24,1996
_____)	TRIAL DATE: Dec. 9, 1996

DECLARATION OF AMY ZUNIGA

I, Amy Girod Zuniga, declare and state as follows:

1. I am over the age of 18 and not a party to this action. I make this declaration in opposition to the Motion for Summary Judgment and could and would competently testify to the facts set forth herein if called as a witness.

2. I am a former employee of State Farm Fire & Casualty Company and State Farm Mutual Automobile Insurance Company (collectively, "State Farm" or "the Company"). I was employed there from 1988 through mid-1996. Since August of 1994, I worked first in the automobile company's so-called "SAC" unit. These units were later renamed "litigation units." My responsibilities included evaluating bad faith suits brought against the company by insureds, responding to discovery, monitoring litigation, interviewing witnesses, assisting in the preparation of witnesses for deposition, reviewing pleadings, responding to inquiries as to how State Farm's policies were to interpreted as well as responding to general questions which were raised regarding State Farm's response to a particular situation. Prior to my assignment to the SAC unit, I worked as a claims specialist and claims representative in automobile related claims.

3. As a result of my work with State Farm I became familiar with the procedures and practices of State Farm, the company policies and approaches of State Farm to particular types of litigation, including litigation arising out of automobile accidents which involved bodily injury. I also became familiar with the methods of training and materials provided to claims representatives by State Farm. Finally, as a result of reviewing literally thousands of State Farm files and of my knowledge of the procedures at State Farm, I have knowledge and understanding of what documents and materials are to be included in State Farm files.

THE CLAIMS FILE AND ATTORNEY'S FILE

4. I have reviewed the documents bates stamped LSSF 0001 through 0909. The first page of said documents is a cover letter from an attorney representing State Farm (Syna N. Dennis at Atkins & Evans) which states that the enclosure constitutes the "claims file" in connection with both the accident of November, 1993 and the accident of February, 1995.

5. Her statement was false. The materials provided were incomplete. Portions of what was expected to be included in the claims file were not produced and in the documents produced there was reference to documents in the claim file which were not included. No list of any items that were privileged was provided. (I am advised that State Farm contends nothing was withheld.) The response to the Request for Production seeking the claim files specified that the claim file would be produced. This response was false.

6. I have also reviewed the deposition of Chris Arnold, claims superintendent, which was taken in this matter. That transcript reveals that Mr. Arnold acknowledged that the entire claims file had not been provided and that counsel for State Farm agreed to obtain and provide the remainder of the claims file.

7. I have been provided with documents that have been bates stamped LSSFS 0001-392 which were purportedly produced as the remainder of the claim file on or about October 28, 1996.

8. I have also been provided with a copy of the "attorney's file" produced by State Farm bates stamped KF 1-517.

9. Having reviewed the documents bates stamed LSSF, those bates stamped LSSFS and those bates stamped KF 1-517, based upon my knowledge of the practices and procedures of State Farm the following items were not produced and have never been identified by State Farm as being part of the claims file or attorney's file. These items were clearly called for by the first Request for Production of Documents submitted by the plaintiff in this matter.

   a. A key letter (1/31/95) to Mr. Rowell (LS1050) from the Claims Representative was not in the claims file, nor in the attorney's file (although a draft from Bartholmew's office was included).

   b. Even assuming these claims were classified as a "low impact"/"low damager" claims, there should have been evaluations in the file. There were none.

   c. The "coverage card" on the first loss which was included was not

created until July, 1995 (it should have been created as soon as the file was transferred to the bodily unit in January of 1995.) The progress reports show that Mr. Arnold repeatedly checked the box stating "reserves adequate" which he could not have done unless a coverage card was opened earlier. This earlier card has not been produced.

d. The following records are not included in either the claims file or the attorneys file.

i. The Allstate Insurance Company records, produced on May 30, 1995 (194 pages).

ii. The Leon H. Brooks records, produced on October 18, 1995 (108 pages).

iii. The records of Bi-Coastal Payroll Services, produced on September 28, 1995.

iv. The records of Dr. Howard Aaron Aronow produced on October 4, 1995 (20 pages).

v. The records of Transamerica Insurance Group produced on October 25, 1995 (505 pages).

10. These documents should have been included in one or both files. The documentation regarding claims handling does not appear complete, and entries in the attorney's bills reflecting conversations with claim's people are not reflected in the claims file.

11. Additionally, after agreeing to a Stipulation and Order Re: Confidentiality which was provided to me by plaintiff's counsel, I reviewed the documents which have been bates stamped SFCM 0001-0094. According to the Stipulation and Protective Order these are all portions of the claims manual and/or claims handling procedures documents which are responsive to the Request for Production of Documents submitted by the plaintiff, Request No. 1, Item No. 2. State Farm did not identify any portion that was not produced (as required by the stipulation).

12. Based on my own personal knowledge, State Farm's response to the Request for Production is false and materially incomplete.

13. State Farm maintains extremely detailed "Claims Procedures Guides" comprised of thousands of pages dealing specifically with individual coverages under automobile policies and claims handling procedures with respect to each claim. State Farm also maintains a smaller document called the "Auto Claims Manual" which, in most cases, is more general in approach.

14. Although both these documents were requested, State Farm has only produced two portions of the "Auto Claims Manual" and has neither produced nor identified other portions of the "Auto Claims Manual" which are applicable to Mrs. Stoliar's claims. In particular, the uninsured/underinsured motorists section of the Auto Claims Manual has not been produced. Additionally, the miscellaneous section of the Auto Claims Manual referred to in the bodily injury section dealing with "first call" settlements (which was apparently attempted with respect to the February, 1995 accident by Ann Spratt) was not produced. State Farm has not produced nor identified any portion of the Claims Procedures Guide which is applicable to Mrs. Stoliar's claims.

HIDING OTHER DOCUMENTS

15. Further, in connection with my retention as an expert witness in this case, I have reviewed the deposition transcript of Chris Arnold and have determined that said witness misrepresented, either intentionally or inadvertently, the existence of certain documents. Specifically, I am aware that State Farm generates and maintains lists of law firms that were generally used for outside counsel. Mr. Arnold denied the existence of such a list. There are two such lists, an accepted group of attorneys for first party claims and an accepted group of attorneys for third party claims. Claims representatives have to be certified in writing that claims representatives have been certified as reviewing the Uniform Claims Practices Act and regulations promulgated thereunder. State Farm keeps these records and Mr. Arnold as a superintendent, knows this.

16. Further, Additionally, Mr. Arnold did not identify any Suits Against Company State Farm representatives as being present when he was prepared for his testimony. According to well established policy, a representative of the SAC unit must be present when he is prepared for testimony.

17. Based upon my review of the portions of the claims files I have reviewed (LSSF 1-909, LSSFS 1-302, and the depositions of certain of the Claims Representatives, I have concluded as follows:

a. Per a State Farm policy adopted in approximately 1993 in my region, no offer was to be made on the November, 1993 accident because it was apparently classified as a "minor-impact" or "low damager" claim.

b. This categorization was unreasonable since State Farm knew that there was almost $3,000.00 in property damage from this accident. The continued use of the curb side eye ball estimate as the damage to the Stoliar's was also unreasonable because State Farm knew the Stoliar vehicle had sustained in excess of $1,000.00 in property damage.

c. Even the use of the actual repair and amount of property damage to the insured's vehicle alone as a basis for determining whether a case was a "minor impact" or "low damager" was unreasonable since in my experience as a claims representative the amount of total damage sustained and repairs performed on both vehicles is a much more reliable indicator of the severity of the collision.

THE COMPANY "LOW DAMAGER" POLICY

18. By company policy "minor impact"/"low damager" claims were not to be settled. Instead they were to be "fully litigated" and every effort was to be made to make it financially unfeasible for the insured to obtain any benefits regardless of whether liability was clear or not. The company policy was to "fully litigate" such claims by:

i. retaining "outside" counsel rather than attempt to resolve the claims;

ii. instructing outside counsel commence formal discovery;

iii. retaining biomechanical experts and accident reconstructionists on "low damager" cases;

iv. instructing outside counsel subpoena records instead of using authorizations to obtain medical and employment records;

v. taking depositions of the claimant/insured, even after the insured had voluntarily given a recorded statement; and

vi. forcing the insured/claimant to undergo so-called IME's performed by doctors the company was confident would give reports unfavorable to the claimant/insured.

19. I was told of this policy when I was a bodily injury negotiator by Superintendent Elizabeth Haines in approximately 1993. Haines instructed me to immediately implement this policy and instructed others to do so as well in my presence. Ms. Haines instructed me to "broadcast" this unwillingness to settle and desire to litigate "low damager" claims to all plaintiffs attorneys offices I dealt with. Ms. Haines told me this policy was being implemented on a regionwide basis.

20. During this conversation and others Ms. Haines and Angelo Mazza (Divisional Claim Manager, now two levels above Mr. Arnold in the chain of command) communicated the "low damager" policy to me and others in my presence.

21. The stated goal and purpose of the "low damager" policy was to make it unprofitable, too expensive and costly, for

plaintiff's attorneys to handle "low damager" cases, even those in which liability was clear. As explained to me, the results of the policy were intended to be a short-term increase in legal fees for the company but a significant long term decrease in benefits payments once the plaintiffs bar became aware that handling "low damager" cases would be too costly and unprofitable. From both personal experience and from what I have been told at State Farm, this policy was extremely effective. When I left the comply in August of 1996 the "low damager" policy was still in effect.

THE HANDLING OF THE STOLIAR CLAIMS

22. I have been provided and have reviewed the following materials at the request of Mr. Rowell:

a. I have been provided with copies of the portions of the claims file transmitted to Mr. Rowell on August 30, 1996, bates stamped LSSF 1-909. I have also been provided with copies of portions of the claims file transmitted to Mr. Rowell with a letter of enclosed dated October 23, 1996 from Robert P. Andris of the law firm of Ropers, Majeski, Kahn and Bently, bates stamped LSSFS1-382.

b. I have reviewed the records of American Data Med copied from Transamerica Insurance Group at the request of State Farm comprising 505 pages which bear a declaration indicating that the custodian of records produced said records on October 25, 1995 to American Data Med.

c. I have reviewed the records of Howard Aaron Aronow obtained by American Data Med on or about October 4, 1995 according to the American Data Med declaration submitted therewith.

d. I have reviewed the records of Dr. Lee Sadja obtained by American Data Med pursuant to declaration on October 4, 1995.

e. I have reviewed the records of Charles Wexler obtained from his office by American Data Med pursuant to subpena per declaration of June 2, 1995.

f. I have reviewed the records of Bi-Coastal Payroll Services obtained from the custodian of records at Bi-Coastal Payroll Services pursuant to a declaration on September 28, 1995.

g. I have reviewed the records of Dr. Leon Brooks obtained from his offices by American Data Med pursuant to declaration on October 18, 1995.

h. I have reviewed the records of Allstate Insurance Company obtained by American Data Med from the Woodland Hills office

pursuant to declaration on May 30, 1995.

i. I have reviewed the records of Physical Medicine and Rehabilitation from Gerald B. Rosenberg, M.D. obtained by American Data Med on or about October 23, 1996.

j. I have reviewed the deposition of Richard A. Lonie taken in this matter on September 20, 1996.

k. I have reviewed the deposition of Seyed Roghani taken on September 17, 1996 in this matter.

l. I have reviewed the deposition of Cathy D. Wright taken in this matter on October 2, 1996.

m. I have reviewed the deposition of Christopher O'Neal Arnold taken in this matter on October 18, 1996, volume 1.

n. I have reviewed volume 1 of the deposition of Traci M. Bell taken in this matter on September 20, 1996 and volume 2 taken in this matter on October 2, 1996.

o. I have reviewed the deposition of Richard Scott Smith taken in this matter on September 17, 1996.

p. I have reviewed the deposition of John D. Rowell and the exhibits attached thereto taken on August 15, 1996 (volume 1).

q. I have reviewed the deposition of John D. Rowell taken September 6, 1996 (volume 2).

r. I have reviewed the deposition of Robert Tessier, Esq. taken in this matter on October 14, 1996.

s. I have reviewed the deposition of Ann Gilmartin Spratt taken in this matter on September 18, 1996.

t. I have reviewed the State Farm attorneys filed together with the privilege log indicating three pages of documents are considered to be privileged and have been withheld and bates stamped KF 1-517 (KF 399-397 were identified as privileged and not produced and I have not reviewed those documents).

u. I have reviewed the deposition of Dr. Lee Sadja, M.D. taken in this matter on and October 15, 1996.

v. I have reviewed the deposition of Jerome Lewis, Ph.D. taken in this matter on October 8, 1996.

w. I have reviewed the deposition of D. Martin Bennet, M.D. taken in this matter on October 7, 1996.

x. I have reviewed the deposition of Dr. Louis Vazquez, M.D. taken in this matter on October 10, 1996.

y. I have reviewed the deposition of Dr. Martin Levine, M.D., taken in this matter on October 25, 1996.

23. The materials that I have reviewed are the type of materials which are customarily relied upon by claims representatives, insurance company claim personnel including those in a supervisory capacity in evaluating the performance of their claims representatives and the appropriateness of the handling of claims by their company. This type of evaluation was one of my functions in the State Farm SAC unit. The following subparagraphs of this paragraph of my declaration represent my conclusions and opinions based upon the review referred to in the preceding paragraph:

a. On November 22, 1993 Linda Stoliar was involved in an automobile accident. She was traveling on Benedict Canyon Road in Sherman Oaks when she stopped because a vehicle was backing into the road in front of her. After she stopped, she was rear-ended by David Cameron. Mrs. Stoliar was driving a 1989 Honda Wagovan Mr. Cameron was driving a Toyota pick-up. At the time of the impact Mr. Cameron was trying to decelerate from a speed of 35-40 miles per hour.

b. Linda Stoliar's vehicle was repaired for $1,014.00 by Foreman Honda. (A shop recommended by Mr. Cameron's insurance company). In addition to body work, the repair required four hours of frame straightening. Mr. Cameron's vehicle was also damaged in the accident. He paid $500.00 (the deductible) and his insurance company, Allstate, paid approximately $1,400.00 for the repair. Initially, Linda sought treatment from Dr. Martin Bennett with complaints of neck pain and right shoulder pain. She was examined and x-rays were taken of the cervical spine which showed loss of normal cervical lordotic curve in the neutral lateral position, changes consistent with regional musculoligamentous spasm. The x-rays were negative for fracture or dislocation. X-rays of the right shoulder were negative for fracture or dislocation as well. Conservative treatment was prescribed. However, conservative treatment did not resolve the symptoms so Dr. Bennett recommended an MRI of the cervical spine due to Linda's persistent pain and headaches.

c. On December 14, 1993 Mrs. Stoliar had an MRI of the cervical spine which showed that there was a 3 millimeter left of center subligamentous herniation at C5-C6 indenting the anterior aspect of the cal sac. Dr. Bennett has opined that this herniation was a direct result of the auto accident. On May 16, 1994 she had an MRI of the head to rule out intercranial bleeding as she still had prolonged headaches. She was released on July 7, 1994 by Dr. Bennett who stated as follows: "The prognosis remains guarded due to the fact that the patient may have headaches and neck pain for the rest of her life and that the natural history of musculoligamentous sprains and strains can, in a significant percentage

of people, show patterns of remission and exacerbations over a long period of time."

d. Mr. Cameron's carrier (Allstate) conceded responsibility for the loss and reimbursed Linda Stoliar for the property damage to her vehicle. One week after the accident, Richard Lonie, the State Farm Claims Representative handling the claims, determined that Mr. Cameron was 100% at fault and that Linda Stoliar was 0% at fault and communicated that information to her on the same day. According to the Allstate records, Allstate also determined that Mr. Cameron was 100% at fault and communicated this to Mr. Cameron. Before any claim was made, State Farm sought and obtained a signed authorization to copy Linda Stoliar's medical and employment records by December 3, 1993. A review of the files of Linda Stoliar's treating doctors show that State Farm never used this authorization to copy or obtain any medical records until January of 1995 when it was used to obtain a copy of Dr. Bennet's records. No other records were copied with this authorization.

e. The diagnosis of Mrs. Stoliar's health care providers was cervical sprain, right shoulder sprain, right sided radiculopathy, cervical concussion, 3mm subligamentous disc herniation and post traumatic headache, all the result of the November 22, 1993 accident. Mrs. Stoliar incurred a total of $14,448.29 in medical specials.

f. Mrs. Stolair's State Farm auto policy provided that State Farm was to pay $10,000.00 of medical payments regardless of fault. In the summer of 1994, having paid less than the $10,000.00 provided for in the policy, State Farm commenced denying payment of doctors bills submitted to it. by Linda Stoliar's healthcare providers. No reason was given for these denials.

g. Subsequently, in January of 1995 State Farm acknowledged by letter that it knew that the $10,000.00 medical payments coverage limit had not been exhausted. Still, State Farm did not pay the remaining medical expenses. It was not until written demand was made by plaintiff's counsel in March of 1995 that State Farm finally paid the remainder of the $10,000.00 medical payments coverage due and owing. At no time did State Farm ever advise that any medical bill submitted was considered by it to be unnecessary, unreasonable or unrelated to the November, 1993 accident.

h. Between the date of the accident and January of 1995, State Farm copied no medical records of plaintiff, consulted with no doctors regarding plaintiff's condition and had absolutely no basis for denial of these medical payment benefits. Other than obtaining the medical records of Dr. Bennett in January of 1995, and the records provided by Mr. Rowell in January of 1995 and again in March of 1995, State Farm did not obtain any medical records on Mrs. Stoliar until after it had settled in September of 1995.

i. After she had been released by Dr. Bennett from treatment regarding the first accident, on February 7, 1995 Linda Stoliar was involved in a second vehicle

accident. While
stopped at an intersection she was struck in an off-set fashion from the rear by a car being driven by Jared Tobman. Although the collision did not cause a great deal of damage to the Stoliar vehicle, because it was an off-set impact from the rear of the vehicle, the Stoliar vehicle was spun about and she began to experience increased neck and back pain. Mrs. Stoliar sought medical treatment from Dr. Bennett again. According to the State Farm claims file, as a result of the second accident she incurred over $6,900.00 in medical expenses. One of the bills that was incurred by Mrs. Stoliar was a MRI of the thoracic spine which had been ordered by Dr. Bennett which was conducted in March of 1995 after her persistent back pain remained unresolved from conservative treatment. The MRI was ordered as a result of the second accident. The bill for the MRI was submitted to State Farm which refused to pay it. After refusing to pay
this bill and those of Linda Stoliar's doctor, Martin Bennett, State Farm's Claims Representative, Ann Spratt, contacted Dr. Bennett, who advised that the bills were incurred as a result of the accident of February, 1995. This conversation occurred on April 19, 1995. Still, State Farm refused to pay the MRI bill. State Farm then advised it was going to submit the MRI to a doctor for review to determine whether it was reasonable and necessary. However, State Farm never asked the doctor is selected, Dr. Martin Levine, to review the MRI or the medical records to determine whether or not the charge or the treatment with respect to the MRI was appropriate. At his deposition Dr. Levine testified that the charge and the treatment was appropriate. Nonetheless, State Farm refused to pay for the MRI until October of 1995 and then only on condition that Linda Stoliar settle her bodily injury claim for $1,000.00.

j. State Farm claims never to have evaluated either of Mrs. Stoliar's claims before September 14, 1995. However, State Farm determined that the other driver was 100% at fault with respect to both claims and never offered anything to settle either claim until September of 1995 when it offered its policy limits of $10,000.00 with respect to the November 22, 1993 claim and October, 1995 when it agreed to pay the MRI bill and $1,000.00 of uninsured motorist benefits with respect to the February 7, 1995 claim.

k. The failure of State Farm to evaluate either of these claims within a shorter time period was a direct result of a company policy that was implemented in approximately 1993. This policy was applied to this case based on the fact that the State Farm appraisal of the damage to the Stoliar vehicle was less than $500.00, even though State Farm knew that the actual damage to the vehicle exceeded $1,000.00. Pursuant to the terms of the company policy a "minor impact" or "low damager" designation was applied to cases where the amount of property damage to the insured's vehicle was "minimal" (usually $500.00 or less). When a case was so categorized, State Farm would take a "hard ball" position regardless of the merits of the claim, refuse to make any reasonable settlement offer and force the matter to a formal arbitration or litigation. In addition, in order to make handling such claims for plaintiffs as costly as possible, State Farm would require its attorney to employ formal discovery devices, retain biomechanical experts

and accident reconstructionists in all of these "low damager" cases.

l. This policy was coupled with a company directive that the claims representative personnel were to advise all counsel that State Farm would not settle these cases and would "fully litigate" them. As indicated in the evidence submitted herewith the goal and stated purpose of this company policy, which was disseminated amongst the legal community at company direction by the claims representatives and other persons working for State Farm, was to discourage the presentation of such claims and to discourage attorneys from representing claimants on these "minor impact"/"low damager" claims by making it virtually financially impossible for a claimant in such a case to obtain representation. This company policy had its desired long term effect.

m. According to the State Farm superintendent in charge of the unit which handled the Stoliar claim, the claim representative who worked on the claim were well aware that they had an obligation under the insurance code and their policy of insurance, to attempt to effectuate fair reasonable and prompt settlements. However, as a result of Mrs. Stoliar's claims being classified as "minor impact"/"low damager" no effort was made to settle this case or make any offer or even evaluate the case until the middle of September of 1995 almost two years after the initial accident and seven months after the second accident. Further, because the second accident was classified as a "minor impact"/"low damager" case, no effort was ever made to evaluate it and no effort was ever made with respect to settlement, even though over $6,900.00 in medical expenses were incurred by Mrs. Stoliar as a result of the second accident.

n. Thus, liability was clear, and that State Farm had conceded that the treatment (with the exception of the MRI of March 1995) was reasonable, necessary and related to each accident (by paying the medical bills). Nonetheless, State Farm claims that no evaluation was made and no offer extended until September 1995. Any reasonable Claims Representative, not bound by the "low damager" policy would conclude the claim for the UIM benefits exceeded the policy limits. Further, in my opinion, the refusal to attempt to settle "low damager" cases in a fair, reasonable and prompt manner was a deliberate company policy arbitrarily implemented on a region-wide basis without regard to the merits of individual claims.

o. Additionally, because of plaintiff's psychiatric history and condition, according to her treating mental health care providers, State Farm's conduct on this file was much more destructive, contributing to the deterioration of plaintiff, suicide attempts and psychiatric hospitalizations during 1995.

I declare under penalty of perjury pursuant to the laws of the State of California, that the foregoing is true and correct.

Executed this 11th day of November, 1996 at Glendale, California.

Amy Girod Zuniga, Declarant

(1) In a signed statement by Mr. Cameron dated December 6, 1993, which was contained in the State Farm claims file, Mr.
Cameron admitted that he was traveling at 35 miles per hour before the accident.

(2) This was a curb-side "eyeball" appraisal by a State Farm employee.

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